UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

DAVI F. V., Plaintiff, v. COMMISSIONER OF SOCIAL SECURITY, Defendant.	NO: 2:22-CV-145-RMP ORDER DENYING PLAINTIFF'S BRIEF AND GRANTING DEFENDANT'S BRIEF

BEFORE THE COURT, without oral argument, are briefs from Plaintiff Davi F. V.[1], ECF No. 10, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 12. Plaintiff seeks judicial review, pursuant to 42 U.S.C. §§ 405(g), of the Commissioner's denial of his claim for Social Security Income ("SSI") under Title XVI of the Social Security Act (the "Act").

[1] In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and middle and last initials.

Having considered the parties' briefs, Plaintiff's reply, the administrative record, and the applicable law, the Court is fully informed. For the reasons set forth below, the Court denies judgment for Plaintiff and directs entry of judgment in favor of the Commissioner.

BACKGROUND

General Context

Plaintiff applied for SSI on approximately July 30, 2018, alleging a disability onset date of June 1, 2018. Administrative Record ("AR")[2] 19, 333–41. Plaintiff was 29 years old on the alleged onset date and asserts that he is unable to work due to anxiety; depression; a personality disorder; obesity, and a skin disorder on his thighs. ECF No. 10 at 2; *see also* AR 369. Plaintiff's claims proceeded to a hearing before Administrative Law Judge ("ALJ") Caroline Siderius, who issued an unfavorable decision on July 22, 2020. AR 156–65. On December 9, 2020, the Appeals Council vacated the ALJ's decision and remanded the case to ALJ Siderius to provide "an adequate evaluation of the medical expert's testimony," specifically whether the ALJ accepted the medical expert Dr. Stephen Rubin's opinion that Plaintiff's return to work would result in two or more days absent from work each month. AR 171–72. The Appeals Council also noted that the ALJ had not

[2] The Administrative Record is filed at ECF No. 6.

explained why she did not accept Dr. Rubin's marked limitation in social functioning and instead found Plaintiff moderately limited in that area. AR 171.

Following the Appeals Council's remand, Plaintiff submitted additional medical evidence, and, on April 12, 2021, Plaintiff appeared for a hearing on remand held telephonically by ALJ Siderius from Spokane, Washington. AR 71, 98–127, 907–1028. Plaintiff was present and represented by attorney David Lybbert. AR 100. The ALJ heard from medical expert testimony Jay Toews, Ed.D., vocational expert ("VE") Daniel McKinney, and Plaintiff. AR 102–26. ALJ Siderius issued an unfavorable decision on April 28, 2021. AR 19–30.

ALJ's Decision

Applying the five-step evaluation process, ALJ Siderius found:

Step one: Plaintiff has not engaged in substantial gainful activity since July 30, 2018, the application date. AR 21 (citing 20 C.F.R. § 404.971 *et seq.*).

Step two: Plaintiff has the following severe impairments: anxiety, depression, obesity, and degenerative disc disease. AR 21 (citing 20 C.F.R. § 416.920(c)). The ALJ further found that, although she had previously found that Plaintiff had a severe personality disorder based on the testimony of Dr. Rubin at the first hearing, Dr. Toews did not assess Plaintiff with a personality disorder, "and the evidence of record does not support such a disorder as a medically determinable impairment."

AR 21–22. The ALJ further found that PTSD is not a medically determinable impairment, based on the testimony of Dr. Toews. AR 22.

Step three: The ALJ concluded that Plaintiff does not have an impairment, or combination of impairments, that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925, and 416.926). AR 22. With respect to Plaintiff's physical impairments, the ALJ memorialized that she considered listings 1.15 (disorders of the skeletal spine resulting in compromise of a nerve root(s)) and 1.16 (lumbar spinal stenosis causing cauda equina compression). AR 22. The ALJ also considered whether Plaintiff's functional limitations resulting from obesity meet or medically equal a listing and found that "no medical source opined that claimant's obesity medically equaled a listing on its own or exacerbated her [sic] other impairments to the point that they medically equaled a listing. The undersigned cannot assume otherwise." AR 22 (citing Social Security Ruling ("SSR") 19-2). In assessing the severity of Plaintiff's mental impairments, the ALJ considered listings 12.04 and 12.06 and whether Plaintiff satisfied the "paragraph B" criteria. AR 22–23. The ALJ found that Plaintiff is mildly limited in: understanding, remembering, or applying information and concentrating, persisting, or maintaining pace. AR 22–24. The ALJ found Plaintiff moderately limited in: interacting with others and in adapting or managing. AR 23–24. Therefore, the ALJ found that Plaintiff does not

exhibit at least two marked limitations or one extreme limitation in a broad area of functioning. AR 24. The ALJ also memorialized her finding that the evidence in Plaintiff's record fails to satisfy the "paragraph C" criteria. AR 24.

Residual Functional Capacity ("RFC"): The ALJ found that Plaintiff can perform medium work, as defined in 20 C.F.R. § 416.967(b), except that:

> he could sit up to eight hours per day; he could stand and/or walk up to one hour at a time before taking a five-minute break; he could stand and/or walk up to four hours in an eight-hour day; he could occasionally crouch, kneel, stoop, crawl, and climb ladders, ropes, or scaffolds; he could have occasional, brief contact with co-workers and no contact with the public; and he could not tolerate more than ordinary production requirements.

AR 24.

In determining Plaintiff's RFC, the ALJ found that Plaintiff's "medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision." AR 25.

Step four: The ALJ found that Plaintiff has no past relevant work. AR 29 (citing 20 C.F.R. § 416.965).

Step five: The ALJ concluded that Plaintiff was not under a disability, as defined by the Act, from September 1, 2018, through the date of the decision. AR 1727 (citing 20 C.F.R. §§ 404.1520(f) and 416.920 (f)).

Plaintiff sought review of the ALJ's decision in this Court. ECF No. 1.

LEGAL STANDARD

Standard of Review

Congress has provided a limited scope of judicial review of the Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner's denial of benefits only if the ALJ's determination was based on legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" also will be upheld. *Mark*

v. Celebrezze, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record, not just the evidence supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

A decision supported by substantial evidence still will be set aside if the proper legal standards were not applied in weighing the evidence and making a decision. *Brawner v. Sec'y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).

Definition of Disability

The Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last, for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Act also provides that a claimant shall be determined to be under a disability only if the impairments are of such severity that the claimant is not only unable to do their previous work, but cannot, considering the claimant's age, education, and work experiences, engage in any other substantial gainful work which exists in the national economy. 42 U.S.C. § 423(d)(2)(A). Thus, the

definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

Sequential Evaluation Process

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled. 20 C.F.R § 416.920. Step one determines if they are engaged in substantial gainful activities. If the claimant is engaged in substantial gainful activities, benefits are denied. 20 C.F.R. § 416.920(a)(4)(i).

If the claimant is not engaged in substantial gainful activities, the decision maker proceeds to step two and determines whether the claimant has a medically severe impairment or combination of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination of impairments, the disability claim is denied.

If the impairment is severe, the evaluation proceeds to the third step, which compares the claimant's impairment with listed impairments acknowledged by the Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. § 416.920(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled.

If the impairment is not one conclusively presumed to be disabling, the evaluation proceeds to the fourth step, which determines whether the impairment prevents the claimant from performing work that they have performed in the past. If the claimant can perform their previous work, the claimant is not disabled. 20 C.F.R. §§ 416.920(a)(4)(iv). At this step, the claimant's RFC assessment is considered.

If the claimant cannot perform this work, the fifth and final step in the process determines whether the claimant is able to perform other work in the national economy considering their residual functional capacity and age, education, and past work experience. 20 C.F.R. § 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137, 142 (1987).

The initial burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once the claimant establishes that a physical or mental impairment prevents them from engaging in their previous occupation. *Meanel*, 172 F.3d at 1113. The burden then shifts, at step five, to the Commissioner to show that (1) the claimant can perform other substantial gainful activity, and (2) a "significant number of jobs exist in the national economy" that the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

ISSUES ON APPEAL

The parties' motions raise the following issues regarding the ALJ's decision:

1. Did the ALJ erroneously assess the medical source opinions?
2. Did the ALJ erroneously discount Plaintiff's subjective complaints?
3. Did the ALJ fail to meet her burden at step five?

Medical Source Opinions

Plaintiff argues that the ALJ could not have relied only upon the opinion of non-examining medical expert Dr. Toews to discredit or ignore the opinion of examining medical source Dr. Rubin. ECF No. 10 at 14–15. Plaintiff asserts that he shows in the introductory section of his opening brief that "Dr. Toews' assumptions and review" were in error. *Id.* at 15. In introducing the relief that he requests, Plaintiff asserts that while the ALJ found persuasive Dr. Toews' opinion that no mental condition causes limitations for Plaintiff, Plaintiff's position is that Dr. Toews based his opinion on three invalid assumptions. ECF No. 10 at 6. First, Plaintiff argues that Dr. Toews stated that Plaintiff's mental status examination findings were normal but "admitted" on cross-examination that his mental status examinations indicated that Plaintiff presented with a "flat affect" and a "disheveled" appearance. ECF No. 10 at 6 (citing nothing). Second, Plaintiff argues that Dr. Toews incorrectly opined that psychological examiner Thomas Genthe, PhD's assessment lacked reliability because the personality inventory testing that Dr. Genthe performed was invalid. *Id.* at 18. Plaintiff counters that Dr. Toews

admitted that Dr. Genthe's interpretation should be "limited," not completely invalid because Plaintiff left twenty percent of the personality inventory blank and Dr. Genthe did not follow up as to the reason for not responding to the questions. *Id.* at 18 (citing AR 104, 112–13). Third, Plaintiff also asserts that Dr. Toews erroneously decided to ignore Plaintiff's symptoms on the basis that Plaintiff did not take the Wellbutrin that was prescribed to him because Plaintiff testified that he did not take Wellbutrin because of severe side effects and that Plaintiff took the alternative medication that was prescribed. *Id.* at 7 (citing nothing).

The Commissioner responds that Plaintiff does not adequately develop his argument with respect to alleged error in treatment of the medical source opinions and does not provide citations to the record. ECF No. 12 at 6 (citing ECF No. 10; *Hibbs v. Dep't of Hum. Res.*, 273 F.3d 844, 873 (9th Cir. 2001), *aff'd sub nom. Nevada Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721 (2003); *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) ("Our circuit has repeatedly admonished that we cannot manufacture arguments for an appellant and therefore we will not consider any claims that were not actually argued in appellant's opening brief.") (internal quotation omitted)). The Commissioner further maintains that the ALJ "thoroughly analyzed all the opinion and prior administrative medical finding evidence, under the applicable regulations, and provided far more than the 'mere scintilla' of support, with extensive citations to the record, necessary to meet the low

threshold of the substantial evidence standard of review." *Id.* at 11–12 (citing *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019)). The Commissioner argues that, on remand from the Appeals Council, the ALJ "fully addressed Dr. Rubin's opinion regarding both Plaintiff's absenteeism, and his social and other mental functional abilities." *Id.* at 12 (citing AR 22–26). The Commissioner asserts that the ALJ relied on substantial evidence in reasoning that Plaintiff's social anxiety symptoms did not rise to the level to which Dr. Rubin opined in light of Plaintiff's activities and presentation to examining providers, as well as the other medical source opinions. *Id.*

The regulations that took effect on March 27, 2017, provide a new framework for the ALJ's consideration of medical opinion evidence, and require the ALJ to articulate how persuasive he finds all medical opinions in the record, without any hierarchy of weight afforded to different medical sources. *See* Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18, 2017). Instead, for each source of a medical opinion, the ALJ must consider several factors, including supportability, consistency, the source's relationship with the claimant, any specialization of the source, and other factors such as the source's familiarity with other evidence in the claim or an understanding of Social Security's disability program. 20 C.F.R. § 416.920c(c)(1)-(5).

Supportability and consistency are the "most important" factors, and the ALJ must articulate how he considered those factors in determining the persuasiveness of each medical opinion or prior administrative medical finding. 20 C.F.R. § 416.920c(b)(2). With respect to these two factors, the regulations provide that an opinion is more persuasive in relation to how "relevant the objective medical evidence and supporting explanations presented" and how "consistent" with evidence from other sources the medical opinion is. 20 C.F.R. § 416.920c(c)(1). The ALJ may explain how he considered the other factors, but is not required to do so, except in cases where two or more opinions are equally well-supported and consistent with the record. 20 C.F.R. § 416.920c(b)(2), (3). Courts also must continue to consider whether the ALJ's finding is supported by substantial evidence. *See* 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . . .").

Prior to revision of the regulations, the Ninth Circuit required an ALJ to provide clear and convincing reasons to reject an uncontradicted treating or examining physician's opinion and provide specific and legitimate reasons where the record contains a contradictory opinion. *See Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). However, the Ninth Circuit has held that the Social Security regulations revised in March 2017 are "clearly irreconcilable with [past Ninth Circuit] caselaw according to special deference to the opinions of treating and

examining physicians on account of their relationship with the claimant." *Woods v. Kijakazi*, No. 21-35458, 2022 U.S. App. LEXIS 10977, at *14 (9th Cir. Apr. 22, 2022). The Ninth Circuit continued that the "requirement that ALJs provide 'specific and legitimate reasons' for rejecting a treating or examining doctor's opinion, which stems from the special weight given to such opinions, is likewise incompatible with the revised regulations." *Id*. at *15 (internal citation omitted).

Plaintiff applied for SSI on approximately July 30, 2018. AR 15, 234–48. Accordingly, as Plaintiff acknowledges is appropriate in his reply, the Court refers to the standard and considerations set forth by the revised rules for evaluating medical evidence. *See* ECF No. 13 at 7.

In formulating Plaintiff's RFC, the ALJ considered the persuasiveness of Dr. Rubin's testimony at the first hearing that Plaintiff likely would be absent more than two days per month if he returned to work. AR 25. The ALJ found that Dr. Rubin's opinion was not supported by objective medical evidence or by Plaintiff's "reports of activity, his presentation to examining providers, and provider opinions generally indicate that his anxiety symptoms do not rise to the level opined by Dr. Rubin." AR 26. The ALJ noted that Dr. Genthe opined in 2018 and 2019 that Plaintiff was "unlikely to function adequately in a work setting until his psychological symptoms have been managed more effectively." AR 26. Dr. Genthe also rated Plaintiff as markedly limited in three or four of thirteen categories of basic work activity. AR

26. The ALJ found Dr. Genthe's opinion inconsistent with Dr. Genthe's own observations of Plaintiff and with the findings of Plaintiff's counselor "who noted in February 2019 that he presented with a positive mood and had significantly increased his social activities to an almost daily basis." AR 26 (citing AR 551, 772). The ALJ further considered the additional medical expert testimony that she received from Dr. Toews at the second hearing and found the majority of Dr. Toews' opinion persuasive. AR 28. Specifically, the ALJ reasoned that Dr. Toews' opinion that Plaintiff should have no more than superficial interaction with the public was persuasive because Dr. Toews "had the opportunity to review all the evidence of record, he provided a thorough explanation of the records he reviewed and how they shaped his opinion, he has specialized expertise in clinical psychology, and he is familiar with Social Security regulations." AR 28. The ALJ found that Dr. Toews' testimony that Plaintiff could perform the job duties of someone who checks produce in the back of a grocery store was not persuasive because Dr. Toews is not a vocational expert. AR 28.

Plaintiff challenges the ALJ's finding that the opinions of Drs. Rubin and Genthe were not persuasive and correspondingly argues that the ALJ should not have relied on the opinion of Dr. Toews. ECF No. 10 at 5–7, 14–15. Plaintiff cites to nothing in the record in his argument alleging error by the ALJ in the treatment of the medical source opinions and instead refers the Court back to Plaintiff's recitation

of the background of the case. *See* ECF No. 10 at 14–15. In Plaintiff's reply, Plaintiff's arguments are not separated into distinct bases for relief, but instead consist of a conglomerated argument of how the ALJ allegedly weighed the evidence incorrectly and did not address the basis for the Appeals Council's remand. *See* ECF No. 13. Even piecing Plaintiff's arguments together and giving Plaintiff the benefit of the doubt regarding whether the arguments are supported by the record, Plaintiff's assertion of error amounts to a reinterpretation of the record and asks this Court to substitute its judgment for that of the agency. This is not the Court's role in a Social Security disability benefits appeal. *Ahearn v. Saul*, 988 F.3d 1111, 1115 (9th Cir. 2021).

Rather, the Court looks to the factors considered by the ALJ, particularly supportability and consistency, and whether those factors were supported by substantial evidence. *See* 20 C.F.R. § 416.920c. In discounting Dr. Rubin's opinion that Plaintiff is markedly limited in interacting with others and may miss more than two days per month, the ALJ cited to evidence that Plaintiff presented to treating providers with mild symptoms and admitted to a provider that it was his "choice" to isolate in his room to "'engross' himself in his gameplay and watch Disney movies associated with the game." AR 26, 749–50. The ALJ also cited evidence that Plaintiff was able to socialize with friends and attend social occasions, including a nephew's birthday party and an event at which Plaintiff assisted his dad. AR 26,

543, 755, and 758. This evidence provides substantial support for the ALJ's determination that the degree of limitation to which Dr. Rubin opined was not supported by the two "most important" persuasiveness factors, supportability and consistency.

Likewise, for Dr. Genthe, the ALJ considered whether Dr. Genthe's opinion was supported by an explanation and objective medical evidence, and cited to evidence indicating that it was not. AR 26, 551, and 772. The ALJ further considered whether Dr. Genthe's opinion was consistent with other evidence in the record and cited to Plaintiff's treating counselor's notes that were inconsistent with Dr. Genthe's opinion. AR 26, 521.

Lastly, the ALJ also cited to substantial evidence in her discussion of why she found Dr. Toews' opinion persuasive, including noting that Dr. Toews was able to review Plaintiff's full record and provided a thorough explanation for how the record supported his opinion. AR 28.

Plaintiff has not shown that the ALJ erred, even assuming that Plaintiff showed that the ALJ could have weighed the medical source opinions differently. Therefore, the Court finds no error on this ground, and grants judgment to Defendant the Commissioner, and denies judgment to Plaintiff, on the same.

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Subjective Symptom Testimony

Plaintiff argues that the ALJ provided insufficient reasons for discounting Plaintiff's subjective complaints. ECF No. 10 at 15. Plaintiff argues that both his mother and examining medical source Dr. Genthe corroborate the limitations that Plaintiff described. *Id*. Plaintiff asserts that the ALJ relied on cherry-picked facts. *Id.* at 16 (no citation to the record). Plaintiff further argues that the ALJ erroneously relies on Plaintiff's daily activities, including attending family gatherings and playing video games online, when the activities do not consume a substantial part of Plaintiff's day and do not support an inference that Plaintiff can sustain work activity. *Id.* at 16–17 (no citation to the record).

The Commissioner does not address the ALJ's treatment of Plaintiff's subjective statements but discusses Plaintiff's statements in the context of the treatment of medical source opinions and cites the Court to Plaintiff's attendance at family events such as a nephew's birthday party and family holiday gatherings, as well as other social activities like serving as best man in a friend's wedding and attending a barbeque. ECF No. 12 at 10, 12 (citing AR 26–27, 543, 545, 755, 758, 837, and 848).

In deciding whether to accept a claimant's subjective pain or symptom testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate "whether the claimant has

presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there is no evidence of malingering, "the ALJ can reject the claimant's testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so." *Smolen*, 80 F.3d at 1281.

The ALJ reasoned that Plaintiff's activities as well as his medical records before and after the date of the remanded decision were inconsistent with the degree of impairment that Plaintiff claims. The ALJ cited to substantial evidence in support of this reasoning, including medical records showing that: Plaintiff reported to a therapist in August 2018 that his mental health symptoms were "minimal if at all present most days" and that Plaintiff was uninterested in employment; that Plaintiff reported to a therapist that his lack of progress toward his mental health goals was "not because of his symptoms impacting his functioning," but instead because he was prioritizing his gaming hobby; and Plaintiff ceased therapy in March 2021 after Plaintiff did not make "significant progress . . . over 30 sessions" and the therapist had unsuccessfully tried to motivate Plaintiff to try to make changes or identify what he is willing to do to change his symptoms[.] AR 623, 627, and 1026. The Court finds no error in the ALJ's assessment of Plaintiff's subjective symptom statements.

Step Five

Plaintiff contends that the ALJ erred at step five because the VE testified in response to a hypothetical that was incomplete due to the ALJ's allegedly improper consideration of the medical opinion evidence and Plaintiff's subjective symptom testimony. *See* ECF No. 10 at 8. The ALJ's hypothetical must be based on medical assumptions supported by substantial evidence in the record that reflect all of a claimant's limitations. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001). The ALJ is not bound to accept as true the restrictions presented in a hypothetical question propounded by a claimant's counsel. *Osenbrock*, 240 F.3d at 1164. The ALJ may accept or reject these restrictions if they are supported by substantial evidence, even when there is conflicting medical evidence. *Magallanes v. Bowen*, 881 F.2d 747, 756 (9th Cir. 1989).

Plaintiff's argument assumes that the ALJ erred in her treatment of Plaintiff's subjective symptom testimony and the medical source testimony in formulating the RFC. As discussed above, the Court finds no error in the ALJ's assessment of this evidence. Therefore, the RFC and hypothetical contained the limitations that the ALJ found credible and supported by substantial evidence in the record. The ALJ's reliance on testimony that the VE gave in response to the hypothetical was proper. *See Bayliss*, 427 F.3d at 1217–18. The Court grants judgment to the Commissioner on this final ground.

Lastly, the Court notes that Plaintiff raises in a conclusory manner the allegation that the ALJ failed to "properly evaluate the Mental [sic] conditions affecting the Plaintiff, by failing to look at the record in a 'longitudinal' fashion, as required by Statute [sic][.]" ECF No. 10 at 2. However, the Court already determined that the ALJ cited to evidence over the course of Plaintiff's medical record in evaluating the medical source opinions and subjective symptom statements, and the Court finds no fruitful purpose in pursuing this undeveloped issue any further.

CONCLUSION

Having reviewed the record and the ALJ's findings, this Court concludes that the ALJ's decision is supported by substantial evidence and free of harmful legal error.

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Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Opening Brief, **ECF No. 10**, is **DENIED**.

2. Defendant the Commissioner's Brief, **ECF No. 12**, is **GRANTED**.

4. Judgment shall be entered for Defendant.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, enter judgment for Defendant as directed, provide copies to counsel, and **close the file** in this case.

DATED December 5, 2023.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Senior United States District Judge